

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS Mark Enterprises, LLC - Series 4 1513 West Passyunk Avenue, Philadelphia, PA 19145</p> <p>(b) County of Residence of First Listed Plaintiff <u>Philadelphia</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) Andrew L. Miller, Esquire (610) 617-1776 15 St. Asaph's Road, Bala Cynwyd, PA 19004</p>	<p>DEFENDANTS United States Postal Service - Utilities Real Estate 7029 Albert Pick Road, Greensboro, NC 27498-1103</p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known) _____</p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <div style="display: flex; justify-content: space-between;"> <div style="width:48%;"> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 2 U.S. Government Defendant</p> </div> <div style="width:48%;"> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p> </div> </div>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width:100%;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT <i>(Place an "X" in One Box Only)</i>			Click here for: Nature of Suit Code Descriptions.		
CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input checked="" type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p>Other:</p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <p>IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding

☐ 2 Removed from State Court

☐ 3 Remanded from Appellate Court

☐ 4 Reinstated or Reopened

☐ 5 Transferred from Another District *(specify)*

☐ 6 Multidistrict Litigation - Transfer

☐ 8 Multidistrict Litigation - Direct File

<p>VI. CAUSE OF ACTION</p>	<p>Cite the U.S. Civil Statute under which you are filing <i>(Do not cite jurisdictional statutes unless diversity):</i></p> <hr/> <p>Brief description of cause: <u>Breach of lease, ejectment from premises</u></p>
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<p>VII. REQUESTED IN COMPLAINT:</p>	<p><input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.</p> <p>DEMAND \$ _____</p> <p>CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
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VIII. RELATED CASE(S) IF ANY *(See instructions):*

JUDGE _____ DOCKET NUMBER _____

DATE 1/6/22 SIGNATURE OF ATTORNEY OF RECORD Andrew L. Miller

FOR OFFICE USE ONLY

RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____	MAG. JUDGE _____
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

Mark Enterprises, LLC – Series 4	:	Civil Action No.
1513 West Passyunk Avenue	:	
Philadelphia, PA 19145	:	
	:	
vs.	:	
	:	
United States Postal Service	:	
Utilities Real Estate	:	
7029 Albert Pick Road	:	
Greensboro, NC 27498-1103	:	

COMPLAINT

Plaintiff Mark Enterprises, LLC – Series 4, by and through its undersigned counsel, brings this Complaint and states the following:

PARTIES

1. Plaintiff is Mark Enterprises, LLC – Series 4, a Delaware limited liability company, with its principal place of business at 1513 West Passyunk Avenue, Philadelphia, PA 19145.

2. Defendant United States Postal Service is an independent agency in the executive branch of the United States Federal Government responsible for providing postal services in the United States with its headquarters at 475 L’Enfant Plaza SW, Washington, DC 20260-0004, and with an address for purposes of this action c/o Utilities Real Estate, 7029 Albert Pick Road, Greensboro, NC 27498-1103.

JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to 39 U.S. Code Section 409(a) which provides:

- (a) Except as otherwise provided in this title, the United States District Courts shall have original but not exclusive jurisdiction for all actions brought by or against the Postal Service. Any action brought in a State Court to which the Postal Service is a party may be removed to the appropriate United States District Court under the provisions of Chapter 89 of Title 28.

4. Venue in this Court is proper as the real estate which is the subject of this action is located in Philadelphia, Pennsylvania.

FACTS

5. On April 1, 2016, Defendant, as Tenant, and Peter Roberts Enterprises, Inc. entered into a written lease agreement (the “Lease”) whereby Defendant agreed to lease from Plaintiff certain premises identified in the Lease and located at 2500 Snyder Avenue, Philadelphia, PA 19145-9998 (the “Leased Premises”). An unsigned, but true and correct copy of the signed Lease, is attached hereto as Exhibit “A”.

6. The term of the Lease began April 1, 2016 and ended on March 31, 2021. See Lease, Paragraph 2.

7. By Deed dated April 6, 2021 and recorded in the Office of the Commissioner of Records of Philadelphia on May 4, 2021 at Document ID Number 53826784, Peter Roberts Enterprises, Inc. conveyed the property to Plaintiff.

8. With the conveyance of the property, Peter Roberts Enterprises, Inc. assigned all rights in the Lease to Plaintiff. A true and correct copy of the Assignment of Leases dated April 6, 2021 is attached hereto as Exhibit “B”.

9. As required in Paragraph 4(d)(2) of the Lease, Peter Roberts Enterprises, Inc. and Plaintiff executed and delivered to Defendant the USPS form Certificate of Transfer of Title to Leased Property and Lease Assignment and Assumption. A true and correct copy of the said form is attached hereto as Exhibit “C”.

10. The term of the Lease ended on March 31, 2021.

11. Defendant has continued to occupy the Leased Premises.

12. By letter dated September 15, 2021, Plaintiff gave Defendant notice that Defendant’s tenancy would be terminated effective December 31, 2021. A true and correct copy of that letter is attached hereto as Exhibit “D”.

COUNT I – BREACH OF CONTRACT - EJECTMENT

13. Plaintiff incorporates the preceding averments of this Complaint by reference as if set forth at length herein.

14. Despite the end of the lease term and despite notice, Defendant has failed and refused to vacate the Leased Premises.

15. Plaintiff is entitled to exclusive possession of the Leased Premises.

16. Defendant has no right to continued possession at the Leased Premises.

17. Plaintiff requests that this Court enter an Order ejecting Defendant from the Leased Premises and granting Plaintiff exclusive possession thereof.

WHEREFORE, Plaintiff respectfully requests that this Court enter an Order ejecting Defendant from the Leased Premises and granting Plaintiff exclusive possession thereof and granting such other and further relief as is just.

COUNT II – DECLARATORY JUDGMENT

18. Plaintiff incorporates the preceding averments of this Complaint by reference as if set forth at length herein.

19. Plaintiff seeks a declaration pursuant to the Federal Declaratory Judgment Act, US Code Section 201(a), that the term of the Lease is ended, and that Plaintiff is entitled to exclusive possession of the Leased Premises.

20. There exists a case of actual controversy within jurisdiction of the Federal Courts.

WHEREFORE, Plaintiff respectfully requests that this Court enter declaration pursuant to 28 U.S. Code Section 201(a), that the term of the Lease is ended, and that Plaintiff is entitled to exclusive possession of the Leased Premises.

COUNT III – RENTS AND MESNE PROFITS

21. Plaintiff incorporates the preceding averments of this Complaint by reference as if set forth at length herein.

22. Plaintiff is entitled to recover such rents and other charges as are due under the Lease until such time as Plaintiff obtains exclusive possession of the Leased Premises, deducting therefrom any amounts paid by Defendant.

23. In the alternative, Plaintiff is entitled to such mesne rents and other charges representing the fair rental value of the Leased Premises from and after the date of

termination of the Lease until the date that Plaintiff obtains exclusive possession of the Leased Premises, together with such other and further charges as may be proved and deducting therefrom any payments made by Defendant Tenant following the date of termination of the Lease.

WHEREFORE, Plaintiff demands judgment in its favor and against Defendant for rents, mesne rents and charges in such amounts as may be proven at trial, together with interest, costs and attorney's fees as permitted by law.

COUNT IV – DAMAGES AT LAW

24. Plaintiff incorporates the preceding averments of this Complaint by reference as if set forth at length herein.

25. Plaintiff has and will suffer harm as a result of the Defendant's unlawful conduct, including but not limited to, lost rents at the market value of the Leased Premises and lost opportunities to lease the Leased Premises to other potential tenants who will utilize a larger portion of the property containing the Leased Premises.

26. Plaintiff is entitled to all the damages that flow from the unlawful conduct of the Defendant.

WHEREFORE, Plaintiff demands judgment in its favor and against Defendant for rents, mesne rents and charges in such amounts as may be proven at trial, together with interest, costs and attorney's fees as permitted by law.

Respectfully submitted,

Andrew L. Miller

Andrew L. Miller, Esquire

Attorney ID # 55994

Andrew L. Miller & Associates, P.C.

15 St. Asaph's Road

Bala Cynwyd, PA 19004

(610) 617-1776

amiller@amillerlaw.com